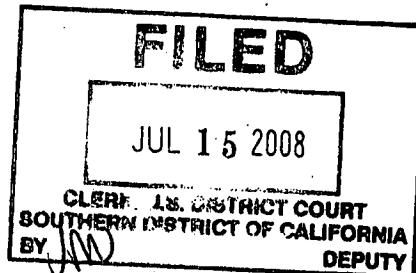


1 KAREN P. HEWITT
United States Attorney
2 MICHELLE M. PETTIT
Assistant U.S. Attorney
3 California State Bar No. 25306
Federal Office Building
4 880 Front Street, Room 6293
San Diego, California 92101-8893
5 Telephone: (619) 557-7450
6 Attorneys for Plaintiff
United States of America
7
8

ORIGINAL



9
10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Criminal Case No. 08-CR-1974-BEN
12 Plaintiff,)
13 v.) PLEA AGREEMENT
14 RENE ESPINDOLA-GALLEGOS (1),) (Pre-Indictment Fast-Track Program)
15 Defendant.)
16 _____)

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
18 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,
19 and Michelle M. Pettit, Assistant United States Attorney, and
20 defendant, RENE ESPINDOLA-GALLEGOS, with the advice and consent of
21 Michael I. Littman, counsel for defendant, as follows:
22 //
23 //
24 //
25 //
26 //
27 //

28 MIP:psd:6/6/08

Def. Initials R.P.B.

1

I

2

THE PLEA

3 A. The Charge. Defendant agrees to waive Indictment and plead
 4 guilty to a single-count Information charging defendant with:

5 On or about June 1, 2008, within the Southern District of
 6 California, defendant RENE ESPINDOLA-GALLEGO, with the
 7 intent to violate the immigration laws of the United
 8 States, knowing and in reckless disregard of the fact that
 9 an alien, namely, Samuel Curiel-Saavedra, had come to,
 10 entered and remained in the United States in violation of
 11 law, did transport and move, said alien within the United
 12 States in furtherance of such violation of law; in
 13 violation of Title 8, United States Code,
 14 Section 1324(a)(1)(A)(ii) and (v)(II).

10

11 This plea agreement is part of a "package" disposition. In order
 12 for defendant to receive the benefit of this agreement, codefendant
 13 JOSE ANTONIO ESPINDOLA-GALLEGO also must plead guilty at the same
 14 time. See Section VI E. below.

15 B. Early Disposition (Fast-Track) Program. The disposition
 16 contemplated by this plea agreement is pursuant to an early
 17 disposition (Fast-Track) program authorized by the Attorney General
 18 of the United States and the United States Attorney for the Southern
 19 District of California.

20 C. Program Requirements. As part of this plea agreement, and
 21 as set forth in Section X.A.4 below, the United States will move the
 22 Court to depart downward two offense levels under USSG § 5K3.1
 23 provided defendant complies with the following early disposition
 24 (Fast-Track) program requirements, to which defendant specifically
 25 agrees:

26 1. to waive indictment on or before the first preliminary
 27 hearing date;

28 //

1 2. to stipulate in writing on or before the first
2 preliminary hearing date that:

3 a. the material witnesses:

4 (1) are aliens with no lawful right to enter or
5 remain in the United States;

6 (2) entered the United States illegally on or
7 about a date certain;

8 (3) were found in rural terrain near the
9 international border with Mexico and for whom defendant was the guide,
10 and defendant knew they were aliens with no lawful right to enter or
11 remain in the United States;

12 (4) were paying or having others pay on their
13 behalf, to defendant or others to be transported illegally to their
14 destination in the United States; and,

15 (5) may be released and remanded immediately to
16 the Department of Homeland Security for return to their country of
17 origin.

18 (b) after the material witnesses are ordered released
19 by the Court pursuant to this motion, if defendant does not plead
20 guilty to the charge described above, for any reason, or thereafter
21 withdraws *his guilty plea to that charge, defendant agrees that in
22 any proceeding, including, but not limited to, motion hearings, trial,
23 sentencing, appeal or collateral attack, that:

24 (1) the stipulated facts set forth in paragraph
25 c. (2) (a) (1) - (5) above shall be admitted as substantive evidence;

26 (2) the United States may elicit hearsay
27 testimony from arresting agents regarding any statements made by the
28 material witness(es) provided in discovery, and such testimony shall

Def. Initials R.P.G.
08 CR 1974-067

1 be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as
2 statements against interest of (an) unavailable witness(es); and,

9 3. to execute and file a Waiver of Indictment and a
10 Stipulation of Fact and Joint Motion for Release of Material
11 Witness(es) at the first preliminary hearing date;

12 4. to file or argue no substantive motions, including
13 those described in Fed. R. Crim. P. 12;

14 5. to plead guilty to the charge within 30 days of
15 arraignment on the complaint initially filed against defendant;

16 6. to waive the right to appeal or collaterally attack the
17 plea, conviction, or sentence; and,

18 7. if defendant is illegally in the United States, to

19 stipulate and agree to an order of removal from the United States
20 entered by Executive Office for Immigration Review or authorized
21 Department of Homeland Security official, and unconditionally waives
22 all rights to appeal, reopen, or collaterally attack the order of
23 removal (see Section XI [Defendant Waives Appeal and Collateral
24 Attack] below).

25 D. Timeliness/Offer Revocation. The disposition contemplated
26 by this agreement is conditioned on (1) the original plea agreement
27 being signed by defendant and defense counsel and returned to
28 Government counsel not later than five business days before the

1 disposition date, and (2) the guilty plea being entered on or before
2 July 14, 2008. Therefore, in the event that defendant seeks a delay
3 in the disposition in this case to a date beyond 30 days of
4 arraignment, or otherwise fails to comply with these timeliness
5 requirements, the United States may in its sole discretion revoke the
6 disposition offer contained in this plea agreement and seek
7 defendant's indictment on the underlying charge(s).

8 E. No Prosecution on Mandatory Minimum Count. In exchange for
9 defendant's guilty plea and sentencing on the single-count Information
10 and provided defendant complies fully with all terms of this plea
11 agreement, the Government agrees not to charge him/her with violating
12 8 U.S.C. § 1324(a)(2)(B)(ii), which, under the facts of this case,
13 carries a three-year mandatory minimum sentence.

14 F. Forfeiture. The defendant further agrees to the
15 administrative and/or civil forfeiture of all properties seized in
16 connection with this case which the defendant agrees are subject to
17 forfeiture to the United States pursuant to Title 8, United States
18 Code, Section 1324(b). The defendant further waives his right to
19 receive timely notice of administrative forfeiture as set forth in
20 18 U.S.C. § 983(a) and waives receipt of all notice of forfeiture in
21 this and all other administrative and civil proceedings. Defendant
22 warrants and represents as a material fact that all property in which
23 he has any interest may be forfeited as described above.

24 //

25 //

26 //

27 //

28 //

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. The person specified in the count is an alien;
 2. The person specified in the count was not lawfully in the United States;
 3. Defendant knew, or acted in reckless disregard of the fact that the person specified in the count was not lawfully in the United States;
 4. Defendant knowingly transported or moved, or attempted to transport or move, the person in order to help him remain in the United States illegally; and,
 5. Defendant acted with the intention of violating the immigration laws of the United States.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

15 Defendant has fully discussed the facts of this case with defense
16 counsel. Defendant has committed each of the elements of the crime,
17 and admits that there is a factual basis for this guilty plea. The
18 following facts are true and undisputed:

1. On June 1, 2008, defendant and codefendant JOSE ANTONIO ESPINDOLA-GALLEGOS guided two aliens including Samuel Curiel-Saavedra within the United States approximately three miles east of the Otay Mesa, California Port of Entry.
 2. Samuel Curiel-Saavedra, and at least one other, were aliens not lawfully in the United States.
 3. Defendant knew, or was in reckless disregard of the fact, that the two aliens, including Samuel Curiel-Saavedra, were not lawfully in the United States.
 4. Defendant knowingly transported or moved, or attempted to transport or move the aliens in order to help them remain in the United States illegally.

1 5. The material witness was paying \$200 to others to be
2 transported illegally to his destination in the United
 States.

3 6. Defendant committed the above acts with the intention
 of violating United States immigration laws.

III

PENALTIES

7 Defendant understands that the crime to which defendant is
8 pleading guilty carries the following penalties:

- 9 A. a maximum 5 years in prison;

10 B. a maximum \$250,000 fine;

11 C. a mandatory special assessment of \$100.00 per count; and

12 D. a term of supervised release of 3 years. Defendant
13 understands that failure to comply with any of the
14 conditions of supervised release may result in revocation
of supervised release, requiring Defendant to serve in
prison all or part of the term of supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

17 Defendant understands that this guilty plea waives the right to:

- 18 A. continue to plead not guilty and require the Government to
19 prove the elements of the crime beyond a reasonable doubt;
20 B. a speedy and public trial by jury;
21 C. the assistance of counsel at all stages of trial;
22 D. confront and cross-examine adverse witnesses;
23 E. present evidence and to have witnesses testify on behalf of
24 defendant; and,
F. not testify or have any adverse inferences drawn from the
failure to testify.

26 //

27 //

28 //

1

V

2

**DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

3

4 The Government represents that any information establishing the
 5 factual innocence of defendant known to the undersigned prosecutor in
 6 this case has been turned over to defendant. The Government will
 7 continue to provide such information establishing the factual
 8 innocence of defendant.

9 Defendant understands that if this case proceeded to trial, the
 10 Government would be required to provide impeachment information
 11 relating to any informants or other witnesses. In addition, if
 12 defendant raised an affirmative defense, the Government would be
 13 required to provide information in its possession that supports such
 14 a defense. Defendant acknowledges, however, that by pleading guilty
 15 defendant will not be provided this information, if any, and
 16 Defendant also waives the right to this information. Finally,
 17 defendant agrees not to attempt to withdraw the guilty plea or to file
 18 a collateral attack based on the existence of this information.

19

VI

20

**DEFENDANT'S REPRESENTATION THAT GUILTY
PLEA IS KNOWING AND VOLUNTARY**

21

22

Defendant represents that:

23

A. Defendant has had a full opportunity to discuss all the
 facts and circumstances of this case with defense counsel,
 and has a clear understanding of the charges and the
 consequences of this plea;

25

26

B. No one has made any promises or offered any rewards in
 return for this guilty plea, other than those contained in
 this agreement or otherwise disclosed to the court;

27

28

C. No one has threatened defendant or defendant's family to
 induce this guilty plea; and,

Def. Initials
 08 CR *R.E.H.*

D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

E. "Package" Disposition. Further, defendant expressly acknowledges his understanding that the disposition contemplated by this agreement is part of a "package" disposition with his codefendant JOSE ANTONIO ESPINDOLA-GALLEGOS, wherein the Government's obligations under the agreement are conditioned on the performance by defendant and his codefendant of their obligations under the agreement.

VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF CALIFORNIA**

10 This plea agreement is limited to the United States Attorney's
11 Office for the Southern District of California, and cannot bind any
12 other federal, state or local prosecuting, administrative, or
13 regulatory authorities, although the Government will bring this plea
14 agreement to the attention of other authorities if requested by the
15 defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

18 Defendant understands the sentence imposed will be based on the
19 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
20 further that in imposing the sentence, the sentencing judge must
21 consult the United States Sentencing Guidelines (Guidelines) and take
22 them into account. Defendant has discussed the Guidelines with
23 defense counsel and understands that the Guidelines are only advisory,
24 not mandatory, and the court may impose a sentence more severe or less
25 severe than otherwise applicable under the Guidelines, up to the
26 maximum in the statute of conviction. Defendant understands further
27 that the sentence cannot be determined until a presentence report has
28 been prepared by the U.S. Probation Office and defense counsel and the

1 Government have had an opportunity to review and challenge the
2 presentence report. Nothing in this plea agreement shall be construed
3 as limiting the Government's duty to provide complete and accurate
4 facts to the district court and the U.S. Probation Office.

5 **IX**

6 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

7 This plea agreement is made pursuant to Federal Rule of Criminal
8 Procedure 11(c)(1)(B). Defendant understands that the sentence is
9 within the sole discretion of the sentencing judge. The Government
10 has not made and will not make any representation as to what sentence
11 defendant will receive. Defendant understands that the sentencing
12 judge may impose the maximum sentence provided by statute, and is also
13 aware that any estimate of the probable sentence by defense counsel
14 is a prediction, not a promise, and is not binding on the Court.
15 Likewise, the recommendation made by the Government is not binding on
16 the Court, and it is uncertain at this time what defendant's sentence
17 will be. Defendant also has been advised and understands that if the
18 sentencing judge does not follow any of the parties' sentencing
19 recommendations, defendant nevertheless has no right to withdraw the
20 plea.

21 **X**

22 **PARTIES' SENTENCING RECOMMENDATIONS**

23 **A. SENTENCING GUIDELINE CALCULATIONS**

24 Although the parties understand that the Guidelines are only
25 advisory and just one of the factors the court will consider under
26 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
27 recommend the following Base Offense Level, Specific Offense
28 Characteristics, Adjustments and Departures (if applicable):

1	1.	Base Offense Level [USSG § 2L1.1(a) (3)]	12
2	2.	Prior Immigration Felony [USSG § 2L1.1(b) (3)]	0*
3	3.	Acceptance of Responsibility [USSG § 3E1.1]	-2
4	4.	Departure for Fast Track [USSG § 5K3.1]	<u>-2</u>
5	Total Offense Level		
6			8

7 * There is no agreement regarding defendant's criminal history
 8 category. However, if defendant has previously sustained a conviction
 9 for a felony immigration and naturalization offense, the parties will
 10 recommend a +2 adjustment, pursuant to USSG 2L1.1(b) (3) (A). If
 11 defendant has previously sustained two or more such felony immigration
 12 convictions, the parties will recommend a +4 adjustment, pursuant to
 13 USSG 2L1.1(b) (3) (B).

14 B. ACCEPTANCE OF RESPONSIBILITY

15 Notwithstanding paragraph A.3 above, the Government will not
 16 recommend any adjustment for Acceptance of Responsibility if
 17 defendant:

- 18 1. Fails to admit a complete factual basis for the plea
 at the time it is entered, or
- 19 2. Denies involvement in the offense, gives conflicting
 statements about that involvement, or is untruthful
 with the Court or probation officer, or
- 20 3. Fails to appear in court, or
- 21 4. Engages in additional criminal conduct, or
- 22 5. Attempts to withdraw the plea, or
- 23 6. Refuses to abide by any lawful court order.
- 24 7. Contests or assists any third party in contesting the
 forfeiture of property(ies) seized or forfeited in
 connection with this case.

25 26 27 28 //

1 C. ADJUSTMENTS AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

2 The parties agree that defendant may request additional downward
3 adjustments and sentence reductions under 18 U.S.C. § 3553 and that
4 the Government will oppose any downward adjustments and sentence
5 reductions not set forth above.

6 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

7 The parties have no agreement as to defendant's Criminal History
8 Category.

9 E. DEPARTURES AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

10 The parties agree that defendant may request additional downward
11 departures, including criminal history departures under USSG § 4A1.3.,
12 and sentence reductions under 18 U.S.C. § 3553 and that the Government
13 will oppose any downward departures or sentence reductions not set
14 forth above.

15 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

16 The parties agree that the facts in the "factual basis" paragraph
17 of this agreement are true, and may be considered as "relevant
18 conduct" under USSG § 1B1.3 and as the nature and circumstances of the
19 offense under 18 U.S.C. § 3553(a)(1).

20 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

21 The parties agree that the Government will recommend that
22 defendant be sentenced to the low end of the advisory guideline range
23 as calculated by the Government pursuant to this agreement. However,
24 if the Court adopts an offense level or downward adjustment or
25 departure below the Government's recommendations in this plea
26 agreement, the Government will recommend a sentence as near as
27 possible to what the sentence would have been if the Government's
28

1 recommendations had been followed. If the defendant is determined to
 2 be in CHC I, the parties will stipulate to a 90 days sentence.

3 H. SPECIAL ASSESSMENT

4 The parties will jointly recommend that defendant pay a special
 5 assessment in the amount of \$100.00 to be paid forthwith at time of
 6 sentencing. The special assessment shall be paid through the office
 7 of the Clerk of the District Court by bank or cashier's check or money
 8 order made payable to the "Clerk, United States District Court."

9 I. STIPULATED REMOVAL

10 If defendant is not a United States citizen or national, either
 11 before or immediately following sentencing, defendant agrees to an
 12 order of removal from the United States entered by Executive Office
 13 for Immigration Review or authorized Department of Homeland Security
 14 official. Defendant understands that defendant will not be removed
 15 until defendant has served any criminal sentence imposed in this or
 16 any other case. Defendant further waives any right to appeal, reopen
 17 or challenge the removal order.

18 XI

19 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

20 In exchange for the Government's concessions in this plea
 21 agreement, defendant waives, to the full extent of the law, any right
 22 to appeal or to collaterally attack the conviction and sentence,
 23 including any restitution order, unless the Court imposes a custodial
 24 sentence above the greater of the high end of the guideline range
 25 recommended by the Government pursuant to this agreement at the time
 26 of sentencing or statutory mandatory minimum term, if applicable. If
 27 the custodial sentence is greater than the high end of that range, the
 28 defendant may appeal, but the Government will be free to support on

1 appeal the sentence actually imposed. If defendant believes the
2 Government's recommendation is not in accord with this agreement,
3 defendant will object at the time of sentencing; otherwise the
4 objection will be deemed waived.

5 If defendant breaches this plea agreement, at any time, by
6 appealing or collaterally attacking the conviction or sentence, in any
7 way, the Government may prosecute defendant for any counts, including
8 those with mandatory minimum sentences, dismissed or not charged
9 pursuant to this plea agreement. Additionally, the Government may use
10 any factual admissions made by defendant pursuant to this plea
11 agreement in any such prosecution.

12 **XII**

13 **CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT**
14 **THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE**
THE PLEA

15 This plea agreement is based on the understanding that, prior to
16 defendant's sentencing in this case, defendant has not committed or
17 been arrested for any offense not known to the Government prior to
18 defendant's sentencing. This plea agreement is further based on the
19 understanding that defendant has committed no criminal conduct since
20 defendant's arrest on the present charges, and that defendant will
21 commit no additional criminal conduct before sentencing. If defendant
22 has engaged in or engages in additional criminal conduct during this
23 period, or breaches any of the terms of any agreement with the
24 Government, the Government will not be bound by the recommendations
25 in this plea agreement, and may recommend any lawful sentence. In
26 addition, at its option, the Government may move to set aside the
27 plea.

28 //

XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

xv

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

11 By signing this agreement, defendant certifies that defendant has
12 read it (or that it has been read to defendant in defendant's native
13 language). Defendant has discussed the terms of this agreement with
14 defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

17 Defendant has consulted with counsel and is satisfied with
18 counsel's representation.

KAREN P. HEWITT
United States Attorney

DATED

MICHELLE M. PETTIT
Assistant U.S. Attorney

DATED

MICHAEL I. LITTMAN
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR
UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"
PARAGRAPH ABOVE ARE TRUE.

619

RENE ESPINDOLA-GALLEGOS
Defendant